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Date: ⁹January 9, 2008 Name: Scott W. Brim Signature: 

Attorney Docket No. 8285/476

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	
)	
Claire Svetlana Vishik et al.)	
Serial No.: 09/990,761)	Examiner: Martin, Ciara A.
Filing Date: November 16, 2001)	Group Art Unit No.: 2155
For: Method and System for Intelligent)	
Routing Based on Presence)	
Detection)	

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the final rejection in the above-identified application.
No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reasons stated on the attached sheets. No more
than five (5) pages are provided.

REMARKS

Claims 1-30 are pending in the application. In the final Office Action dated Oct. 9, 2007, the Examiner rejected claims 1-30 under 35 U.S.C. § 102(e) as being anticipated by U.S. Pat. No. 7,197,565 ("Abdelaziz").

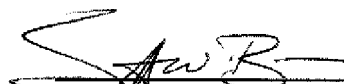
Under 35 U.S.C. §102(e), a person shall be entitled to a patent unless the invention was described in (1) an application for patent, published under section 122(b), by another **filed in the United States before the invention by the applicant** for patent or (2) a patent granted on an application for patent by **another filed in the United States before the invention by the application** for patent. . . . (emphasis added)

The current application was filed **Nov. 16, 2001**. Abdelaziz was filed on **Oct. 3, 2002**. Abdelaziz is a **continuation-in-part** of U.S. Pat. App. No. 10/055,662, a **continuation-in-part** of U.S. Pat. App. No. 10/055,666, a **continuation-in-part** of U.S. Pat. App. No. 10/055,741, and a **continuation-in-part** of U.S. Pat. App. No. 10/164,259. Because Abdelaziz is a continuation-in-part of four applications, Abdelaziz necessarily includes information that is only entitled to a priority date of **Oct. 3, 2002**. Further, Applicants note that at least one of the four applications Abdelaziz claims priority to is only entitled to a priority date of **June 5, 2002**. Disclosure in Abdelaziz that is only entitled to a priority date of Oct. 3, 2002, or June 5, 2002, is not prior art to the current application that was filed on Nov. 16, 2001. The Examiner has not established that the disclosure being used to reject claims 1-30 is entitled to a date before Nov. 16, 2001, rather than a priority date of Oct. 3, 2002, or June 5, 2002.

In the final Office Action dated Oct. 9, 2007, the Examiner states that if an application properly claims benefit under 35 U.S.C. 119(e) to a provisional application, the effective filing date is the filing date of the provisional application for any claims which are fully supported under the first paragraph of 35 U.S.C. § 112 by the provisional application. Applicants agree. However, the Examiner has not established that any portion of Abdelazia relied on by the Examiner to reject claims 1-30 is fully supported under the first paragraph of 35 U.S.C. § 112 by the provisional applications. In fact, the Examiner specifically requested that the Applicants consider the entirety of Abdelaziz, which necessarily includes disclosure that is not prior to the current application. (See Office Action dated Oct. 9, 2007, page 5).

Because the Examiner has failed to establish in the non-final Office Action dated April 9, 2007, and the final Office Action dated Oct. 9, 2007, that the disclosure in Abdelaziz that is asserted to anticipate claims 1-30 was filed **before** the current application as required by 35 U.S.C. § 102(e), the rejection of claims 1-30 as currently contemplated by the Examiner necessarily cannot be maintained. Applicants requests review of the final rejection.

Respectfully submitted,



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PRE-APPEAL BRIEF REQUEST FOR REVIEWDocket Number (Optional) **8285-476**

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Signature: 

Typed or printed

Name Scott W. Brim

Application Number

09/990,761

Filed

November 16, 2001First Named Inventor: **Claire S. Vishik et al.**

Art Unit

2155Examiner: **Martin, Ciara A.**

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Note: No more than five(5) pages may be provided.

I am the

☐ applicant/inventor.☐ assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)

☒ attorney or agent of record.Registration number 51,500☐ attorney or agent acting under 37 CFR 1.34.Registration number if acting under 37 CFR 1.34. 
SignatureScott W. Brim

Typed or Printed Name

312 321-4200

Telephone number

Note: Signatures of all inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*

January 9, 2008

Date

☒ *Total of 1 forms are submitted.